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Lucent Technologies Inc
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In re Application of :
Alessio CASATI, et al. :
Application No. 10/030,387 :
Filed: June 4, 2002 :
For: UMTS TELECOMMUNICATIONS SYSTEM :
FOR ENABLING A MOBILE STATION TO :
RECEIVE VOICE-OVER INTERNET PROTOCOL :
CALLS WHEN ROAMING :

DECISION GRANTING PETITION TO
REFUND EXTENSION OF TIME
FEES

This is a decision on the petition filed on January 31, 2007 (with certificate of mailing dated January 29, 2007), requesting withdrawal of the extension of time fees required under 37 CFR 1.136. The petition is being treated as a request to reset the shortened statutory period for reply set forth in the Office communication mailed on October 27, 2006 and refund the extension of time fees charged to applicant's deposit account.

The petition is **GRANTED**.

A review of the record finds an Office communication (Notice of Non-Compliant Amendment (37 CFR 1.121)) was mailed October 27, 2006 setting forth a one month shortened statutory period for reply, extendable under 37 CFR 1.136(a). Applicant's petition filed January 31, 2007 asserts that the Office communication mailed October 27, 2006 was not received by applicant, and that applicant only became aware of the communication when the examiner contacted them on January 8, 2007 to inform them that their response was two months overdue and provided them an incomplete faxed copy of the Office communication on January 18, 2007.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

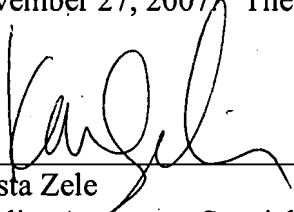
In support of their assertions that they did not receive the Office communication mailed October 27, 2006, the Petitioner attests to a search of the file jacket and docket records as well as providing a copy of their docket records along with the subject petition.

Accordingly, Petitioner has satisfied the requirements set forth above to establish non-receipt of the October 27, 2006 Office communication.

Since applicant has responded to the Office communication (complete copy apparently retrieved from the Office's PAIR system), it has not been re-mailed. Applicant responded on January 31, 2007 (with certificate of mailing dated January 29, 2007), which was within one month of receipt of both the January 8, 2007 notification by the examiner and the January 18, 2007 faxed copy of the Office communication. Furthermore, the response included the instant petition and authorization to charge any deficient fees to applicant's Deposit Account No. 12-2325.

Since it has been established that the Office communication mailed October 27, 2006 was not received, no extension of time fees were required. Accordingly, the extension of time fees charged to applicant's deposit account on June 19, 2007 in the amount of \$1,020.00 will be refunded to Deposit Account No. 12-2325.

The application was previously forwarded to the examiner for treatment of applicant's response. A Notice of Allowance was mailed August 1, 2007 and the application issued as a patent on November 27, 2007. The Office sincerely apologizes for any inconvenience to applicant.



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